Supreme Court, U.S.
FILED

09-303 AUG 26 2009

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No. _____

IN THE
Supreme Court of the United States

IN RE DAVID LEE SMITH,
PETITIONER,

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit

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PETITION FOR A WRIT OF CERTIORARI

M. JULIA HOOK
ATTORNEY AT LAW

5800 East 6th Avenue Parkway
Denver, Colorado 80220
(303) 321-7403

COUNSEL OF RECORD FOR
PETITIONER DAVID LEE SMITH

August 26, 2009

QUESTIONS PRESENTED

Whether the District Court Disciplinary Panel failed or refused to follow its own local rules of practice, which are unconstitutional on their face and/or as applied to Smith in this case.

Whether the local rules of practice of the United States District Court for the District of Colorado providing that an attorney member of the District Court's Bar must remain in good standing in the bars of all state and federal courts to which the attorney member has been admitted in order to be reinstated or readmitted to the District Court's Bar are consistent with "the principles of right and justice" necessary to prevent arbitrary discrimination against Smith, as an out-of-state (Texas) attorney seeking reinstatement or readmission to the District Court's Bar.

Whether the local rules of practice of the United States District Court for the District of Colorado providing that an attorney member of the District Court's Bar must remain in good standing in the bars of all state and federal courts to which the attorney member has been admitted in order to be reinstated or readmitted to the District Court's Bar constitute an abuse of the District Court's discretion to adopt local rules that are necessary to carry out the conduct of its business under 28 U.S.C. §§ 1654, 2071 and Fed. R. Civ. P. 83.

Whether Chief Judge Nottingham was required to disqualify himself from the proceeding on Smith's application for reinstatement or readmission to the

District Court's Bar in accordance with 28 U.S.C. § 455(a) and (b); whether his conduct constituted a denial of Fifth Amendment due process of law.

Whether the District Court Disciplinary Panel abused its discretion and/or committed reversible error by refusing to disclose items omitted from the record on appeal, including but not limited to, the recommendation of the Committee on Conduct on Smith's application for reinstatement or readmission to the District Court's bar, as well as the underlying documentation, or to supplement the record on appeal with the omitted items, which were necessary for Smith to be able to prepare and submit his brief and appendix on appeal—in violation of Fed. R. App. P. 10(e) and the Fifth Amendment to the Constitution of the United States.

Whether Senior Circuit Judge Brorby was required to disqualify himself from Smith's appeal in accordance with 28 U.S.C. § 455(a) and (b); whether his failure to disqualify himself from serving on the Tenth Circuit Panel hearing Smith's appeal (and, instead, actually authoring the Order and Judgment denying the appeal) constituted a denial of Fifth Amendment due process of law.

Whether in approving the District Court Disciplinary Panel's refusal to reinstate or readmit Smith to the District Court's Bar, the Tenth Circuit has again grossly abused its inherent power to impose attorney discipline and other sanctions against Smith, and has so far departed from the accepted and usual course of judicial proceedings, or

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OPINIONS BELOW

On May 12, 2009, a three-judge Panel of the United States Court of Appeals for the Tenth Circuit entered its Order and Judgment affirming the District Court Disciplinary Panel's Order Denying Reinstatement, its Order Denying Motion to Alter or Amend Judgment, its Order Denying Petition for Relief From Rule of Good Standing, and its refusal to disclose items omitted from the record on appeal, as well as the underlying documentation, or to supplement the record on appeal with the omitted items. The Tenth Circuit Panel's Order denying Smith's Petition for Panel Rehearing and for Rehearing *En Banc* was entered on May 28, 2009. These unreported orders or opinions are included in the Appendix (App.) attached to this Petition, at 1a-15a.

JURISDICTION

Jurisdiction is based on this Court's supervisory authority over lower federal courts established in *Frazier v. Heebe*, 482 U.S. 641, 107 S.Ct. 2607, 96 L.Ed.2d 557 (1987). The District Court Disciplinary Panel failed or refused to follow its own local rules of practice, which are unconstitutional on their face and/or as applied to Smith in this case. The local rules of practice of the United States District Court for the District of Colorado providing that an attorney member of the District Court's Bar must remain in good standing in the bars of all state and federal courts to which the attorney member has been admitted in order to be reinstated or

readmitted to the District Court's Bar are inconsistent with "the principles of right and justice" necessary to prevent arbitrary discrimination against Smith, as an out-of-state (Texas) attorney seeking reinstatement or readmission to the District Court's Bar. The local rules of practice of the United States District Court for the District of Colorado providing that an attorney member of the District Court's Bar must remain in good standing in the bars of all state and federal courts to which the attorney member has been admitted in order to be reinstated or readmitted to the District Court's Bar constitute an abuse of the District Court's discretion to adopt local rules that are necessary to carry out the conduct of its business under 28 U.S.C. §§ 1654, 2071 and Fed. R. Civ. P. 83. Chief Judge Nottingham was required to disqualify himself from the proceeding on Smith's application for reinstatement or readmission to the District Court's Bar in accordance with 28 U.S.C. § 455(a) and (b); his conduct constituted a denial of Fifth Amendment due process of law. The District Court Disciplinary Panel abused its discretion and/or committed reversible error by refusing to disclose items omitted from the record on appeal, including but not limited to, the recommendation of the Committee on Conduct on Smith's application for reinstatement or readmission to the District Court's bar, as well as the underlying documentation, or to supplement the record on appeal with the omitted items, which were necessary for Smith to be able to prepare and submit his brief and appendix on appeal—in violation of Fed. R. App. P. 10(e) and the Fifth Amendment to the Constitution of the United States. Senior Circuit

Judge Brorby was required to disqualify himself from Smith's appeal in accordance with 28 U.S.C. § 455(a) and (b); his failure to disqualify himself from serving on the Tenth Circuit Panel hearing Smith's appeal (and, instead, actually authoring the Order and Judgment denying the appeal) constituted a denial of Fifth Amendment due process of law. In approving the District Court Disciplinary Panel's refusal to reinstate or readmit Smith to the District Court's Bar, the Tenth Circuit has again grossly abused its inherent power to impose attorney discipline and other sanctions against Smith, and has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by the District Court as to call for an exercise of this Court's supervisory power.

Jurisdiction in the Tenth Circuit was based on 28 U.S.C. § 1291. The statutory provision believed to confer on this Court jurisdiction to review on a writ of certiorari the Tenth Circuit's decision is 28 U.S.C. § 1254(1), providing that "[c]ases in the courts of appeals may be reviewed by the Supreme Court by the following methods: (1) [b]y writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree . . . ."

CONSTITUTIONAL PROVISIONS, STATUTES, AND RULES INVOLVED

The Fifth Amendment to the Constitution of the United States provides, in pertinent part, that "no person shall be . . . deprived of life, liberty, or property, without due process of law . . . ." U.S. CONST. amend V.

The Fourteenth Amendment to the Constitution of the United States provides, in pertinent part, that "[n]o person shall be . . . deprived of life, liberty, or property, without due process of law . . . ." U.S. CONST. amend. XIV, § 1.

The First Amendment to the Constitution of the United States provides, in relevant part, that "Congress shall make no law . . . abridging the . . . right of the people . . . to petition the government for a redress of grievances." U.S. CONST. amend. I.

Pursuant to this Court's Rule 14.1(f), the provisions of 28 U.S.C. §§ 455, 1654, and 2071, Fed. R. Civ. P. 83, and Fed. R. App. P. 10(e), as well as the provisions of the District Court's local rules of practice involved in this case (including D.C.COLO.LCivR.83.3A, D.C.COLO.LCivR.83.3E, D.C.COLO.LCivR 83.3F, D.C.COLO.LCivR 83.5.I, D.C.COLO.LCrR.57.5A, D.C.COLO.LCrR.57.5E, D.C.COLO.LCrR 57.5F, and D.C.COLO.LCrR 57.7.I) are included in the Appendix (App.) to this Petition, at 21a-31a.

Pursuant to this Court's Rule 10, 12, 13 and 14, David Lee Smith ("Smith"), by and through counsel, M. Julia Hook, respectfully submits his Petition for a Writ of Certiorari. In support thereof, Smith alleges as follows:

STATEMENT OF THE CASE

On May 4, 2007, the United States Court of Appeals for the Tenth Circuit reinstated or readmitted Smith to its Bar. (App. at 16a-18a.) The Tenth Circuit Disciplinary Panel had disbarred Smith on February 13, 1996, without holding a Fifth Amendment due process hearing at which Smith would have the opportunity to present evidence (including expert testimony) on his defenses to the false and defamatory charges being brought against him, and in mitigation of any punishment to be imposed—in this case disbarment. *See In re Smith,* 76 F.3d 335 (10th Cir. 1996) (*per curiam*), *cert. denied,* 519 U.S. 871 (1996); *see also In re Smith,* 10 F.3d 723 (10th Cir. 1993) (indefinite suspension), *cert. denied,* 513 U.S. 807 (1994).

On August 13, 2007, Smith filed his Application for Readmission or Reinstatement to the Bar of the [United States District Court for the District of Colorado] Pursuant to D.C.COLO.LCivR 83.5.I or D.C.COLO.LCrR 57.7.I. The District Court Disciplinary Panel had reciprocally disbarred Smith on April 26, 1996, without holding a Fifth Amendment due process hearing, based on the Tenth Circuit's February 13, 1996 Order of Disbarment. *See In re Smith,* No. 96-DP-4 (D. Colo. April 26, 1996). The Tenth Circuit subsequently affirmed the

District Court Disciplinary Panel's Order of Reciprocal Disbarment.

On August 4, 2008, the District Court Disciplinary Panel entered the following Order Denying Reinstatement:

> This matter is before the Disciplinary Panel of the court on the Application for Reinstatement or Readmission to the Bar of the Court filed by David Lee Smith ("Applicant"), which was filed on August 13, 2007. The Panel has also before it a recommendation of the Committee on Conduct. Applicant was disbarred by this court on April 26, 1996. In the United States Tenth Circuit Court of Appeals, after having been suspended and then disbarred, applicant has successfully sought reinstatement, effective May 4, 2007. He seeks reinstatement in this court on the basis of his status of readmission in the Tenth Circuit. However, as of the date of this order, and as acknowledged by the applicant, he remains disbarred by the Colorado Supreme Court. This court's local rules of practice provide that an attorney admitted to the bar of this court must remain in good standing in all courts where admitted; and the status of good standing means not being subject to suspension or disbarment by any court for any reason; and that an attorney not in good standing is not to practice before this court.

D.C.COLO.LCivR.83.3E and
D.C.COLO.LCrR.57.5E. Accordingly, it is

> ORDERED that the Application for Reinstatement or Readmission to the Bar of the Court is DENIED. It is
>
> FURTHER ORDERED that the December 11, 2006 Motion to Rehear, Reconsider and Vacate the Court's Order of December 5, 2006 (an order which denied a previous request for reinstatement), which remains pending, is DENIED.

(App. at 11a-12a.) The Colorado Supreme Court had reciprocally disbarred Smith on October 4, 1999, without holding a Fourteenth Amendment due process hearing, based on the Tenth Circuit's February 13, 1996 Order of Disbarment. *See In re Smith*, 989 P.2d 165 (Colo. 1999) (*per curiam*); *see also People v. Smith*, 937 P.2d 724 (Colo. 1997) (*per curiam*) (reciprocal suspension based on the Tenth Circuit's November 29, 1993 Order of Indefinite Suspension), *cert. denied*, 522 U.S. 858 (1997).

Notice of Appeal was timely filed on September 3, 2008. On September 18, 2008, the District Court Disciplinary Panel entered its Order Denying Motion to Alter or Amend Judgment:

> Before the Disciplinary Panel is Motion to Alter or Amend Judgment filed August 15, 2008 by Respondent, David Lee Smith. Mr. Smith seeks to alter or amend the

> order of the Disciplinary Panel, which denied his application for reinstatement based on the recommendation of the Committee on Conduct and the Panel's independent review of the record. Having reviewed the grounds proffered by Respondent in support of his motion, the Panel finds no support to disturb its prior order. Accordingly, it is
>
> ORDERED that the Motion to Alter or Amend Judgment is DENIED.

(App. at 13a-14a.)

Amended Notice of Appeal was timely filed on October 17, 2008. On February 20, 2009, the District Court Disciplinary Panel entered its Order Denying Petition for Relief From Rule of Good Standing:

> Before the Disciplinary Panel is the Petition for Relief From the Rule of Good Standing filed by David Lee Smith on November 3, 2008 pursuant to D.C.COLO.LCivR 83.3F. After reviewing the recommendation of the Committee on Conduct and the disciplinary file on this matter, the Disciplinary Panel finds that Mr. Smith has failed to offer clear and convincing evidence that would support his petition. The Petition constitutes nothing more than a thinly veiled attempt to circumvent the Disciplinary Panel's two

prior orders denying Mr. Smith's applications for reinstatement to the bar.

For all the reasons stated in the Disciplinary Panel's prior orders, particularly in light of the fact that Mr. Smith remains disbarred by the Supreme Court of Colorado, it is

ORDERED that the Application for Relief from the Rule of Good Standing is DENIED.

(App. at 14a-15a.)

Amended Notice of Appeal was timely filed on March 2, 2009. In Smith's appeal to the Tenth Circuit, the District Court Disciplinary Panel refused to disclose items omitted from the record on appeal, including but not limited to, the recommendation of the Committee on Conduct on Smith's Application for Readmission or Reinstatement to the District Court's Bar, as well as the underlying documentation, or to supplement the record on appeal with the omitted items.

On May 12, 2009, a Panel of the Tenth Circuit entered its Order and Judgment affirming the District Court Disciplinary Panel's Order Denying Reinstatement, its Order Denying Motion to Alter or Amend Judgment, its Order Denying Petition for Relief From Rule of Good Standing, and its refusal to disclose items omitted from the record on appeal, as well as the underlying documentation, or to

supplement the record on appeal with the omitted items. (App. at 1a-9a.) The Tenth Circuit Panel's Order denying Smith's Petition for Panel Rehearing and for Rehearing *En Banc* was entered on May 28, 2009. (App. at 10a.)

REASONS FOR GRANTING THE WRIT

Although disbarment by a federal court does not follow inexorably from disbarment by a state court, *see Frazier v. Heebe*, 482 U.S. 641, 648 n.7, 107 S.Ct. 2607, 96 L.Ed.2d 557 (1987); *In re Reinstatement of Leaf*, 41 F.3d 281, 284 (7th Cir. 1994), federal courts have held that they should normally give great weight to, and rely on, state disbarment proceedings unless one of the conditions in *Selling v. Radford*, 243 U.S. 46, 37 S.Ct. 377, 61 L.Ed. 585 (1917), is present. *See Leaf*, 41 F.3d at 284; *In re Jafree*, 759 F.2d 604, 608 (7th Cir. 1985) (*per curiam*). "[A] district court, when determining whether to discipline a member of its bar consistent with a state disciplinary adjudication, may impose reciprocal discipline unless, after an independent consideration of the record, the court finds (1) a deprivation of due process; (2) a lack of adequate proof establishing misconduct; or (3) that the imposition of reciprocal discipline would result in grave injustice." *In re Attorney Discipline Matter*, 98 F.3d 1082, 1087-88 (8th Cir. 1996).

The *Selling* factors address whether (1) the disciplining court's procedure denied the attorney due process because of an absence of notice or opportunity to be heard; (2) there was an infirmity of

proof; and (3) there is some other grave reason not to disbar the attorney. *Selling*, 243 U.S. at 51, 37 S.Ct. 377; *see also In re Dawson*, 609 F.2d 1139, 1142 (5th Cir. 1980) ("Supreme Court precedent has established that a state court disbarment should be accorded federal effect, unless it appears from 'an intrinsic consideration of the state record' (1) that the state proceeding was wanting in due process, (2) that the proof in the state proceeding was so infirm 'as to give rise to a clear conviction on our part that we could not consistently with our duty, accept' the state court's conclusion as final, or (3) that to do so would 'that for some other grave reason . . . conflict with the duty which rests upon us not to disbar except upon the conviction that, under the principles of right and justice, we were constrained so to do.'") (quoting *Selling*, 243 U.S. at 51, 37 S.Ct. 377, and citing cases).

A. REVIEW IS WARRANTED BECAUSE THE DISTRICT COURT DISCIPLINARY PANEL FAILED OR REFUSED TO FOLLOW ITS OWN LOCAL RULES OF PRACTICE, WHICH ARE UNCONSTITUTIONAL ON THEIR FACE AND/OR AS APPLIED TO SMITH IN THIS CASE.

Smith was not notified that the District Court Disciplinary Panel intended to apply D.C.COLO.LCivR.83.3E and D.C.COLO.LCrR. 57.5E ("rule of good standing") to his Application for Readmission or Reinstatement to the District Court's Bar. If he had been so notified and given the opportunity to respond, Smith would have been able

to establish, by clear and convincing evidence, that: (1) the procedure resulting in discipline by the Colorado Supreme Court was so lacking in notice or opportunity to be heard as to deny due process, (2) the application of the rule of good standing would result in grave injustice, and/or (3) the kind of misconduct established has been held by the District Court to warrant substantially less severe discipline. *See* D.C.COLO.LCivR 83.3F and D.C.COLO.LCrR 57.5F, adopting a modified version of the *Selling* factors as exceptions to the rule of good standing.

In the absence of proper notice and the opportunity to respond, no application for relief from the rule of good standing was filed pursuant to D.C.COLO.LCivR 83.3F and D.C.COLO.LCrR 57.5F before the District Court Disciplinary Panel denied Smith's Application for Readmission or Reinstatement to the District Court's Bar. When Smith received the District Court Disciplinary Panel's Order Denying Reinstatement, applying the rule of good standing to his Application, he filed his Motion to Alter or Amend Judgment, which was summarily denied:

> Pursuant to Fed. R. Civ. P. 59(e), David Lee Smith ("Smith") files his Motion to Alter or Amend Judgment; and, as grounds therefor, alleges as follows:
>
> 1. On August 13, 2007, Smith filed his Application for Readmission or Reinstatement to the Bar of the Court Pursuant to D.C.COLO.LCivR 83.5.I or

D.C.COLO.LCivR57.7.I, a copy of which is attached hereto as Exhibit 1.

2. On August 4, 2008, the Disciplinary Panel of the United States District Court for the District of Colorado (composed of Chief Judge Edward W. Nottingham, and District Judges Wiley Y. Daniel and Walker D. Miller) filed its Order Denying Reinstatement, a copy of which is attached hereto as Exhibit 2. The Disciplinary Panel held that "[t]his court's local rules of practice provide that an attorney admitted to the bar of this court must remain in good standing in all courts where admitted; that the status of good standing means not being subject to suspension or disbarment by any court for any reason; and that an attorney not in good standing is not to practice before this court," citing D.C.COLO.LCivR 83.3E and D.C.COLO.LCrR 57.5E.

3. Smith submits that this interpretation of the local rules deprives him of substantive and/or procedural due process of law, in that he has been reinstated to practice in the original disciplining court, the United States Court of Appeals for the Tenth Circuit. As stated in his application for readmission or reinstatement to the bar of the United States District Court for the District of Colorado, the Colorado Supreme Court

continues to refuse to reinstate Smith to its bar despite the Tenth Circuit's order of reinstatement--a clear violation of the law of the case established by the Tenth Circuit.

4. Other than the United States District Court for the District of Colorado, the Colorado Supreme Court is the only court to continue to refuse to reinstate Smith to its bar despite the Tenth Circuit's order of reinstatement. Furthermore, the Colorado Supreme Court refused to hold a due process hearing before disbarring Smith from the practice of law in the State of Colorado, as the result of which he was deprived of the opportunity to present expert testimony and other evidence in defense and mitigation to the false and defamatory reciprocal discipline charges being brought against him. The Disciplinary Panel failed to address these issues in its Order Denying Reinstatement.

5. Both the United States Court of Appeals for the Fifth Circuit and the United States District Court for the Northern District of Texas have reinstated Smith to their bars based on the Tenth Circuit's order of reinstatement. The Supreme Court of Texas and the United States Court of Appeals for the Federal Circuit declined to disbar Smith based on

the Tenth Circuit's transparently invalid disbarment order.

For these reasons, Smith requests the Disciplinary Panel to alter or amend its Order Denying Reinstatement, and to reinstate Smith to the bar of the United States District Court for the District of Colorado. Smith requests expedited handling of his motion to avoid further prejudicial delay.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

The District Court Disciplinary Panel also summarily denied Smith's Petition for Relief From the Rule of Good Standing Pursuant to D.C.COLO.LCivR 83.3F or D.C.COLO.LCrR 57.5F:

David Lee Smith ("Smith"), by and through counsel, M. Julia Hook, respectfully submits his Petition for Relief From the Rule of Good Standing Pursuant to D.C.COLO.LCivR 83.3F or D.C.COLO.LCrR 57.5F:

1. On August 13, 2007, Smith filed his Application for Readmission or Reinstatement to the Bar of the Court Pursuant to D.C.COLO.LCivR 83.5.I or D.C.COLO.LCrR 57.7.I.

2. On August 4, 2008, the Disciplinary Panel of the United States District Court for the District of Colorado denied reinstatement because of Smith's lack of good standing in the bar of the Colorado Supreme Court. Smith was automatically suspended or disbarred by the Colorado Supreme Court as the result of the suspension or disbarment by the original disciplining court, in this case the United States Court of Appeals for the Tenth Circuit.[1]

3. Under D.C.COLO.LCivR 83.5.I and D.C.COLO.LCrR 57.7.I, "[a]n attorney suspended or disbarred automatically in a court other than the original disciplining court or this court as a result of suspension or disbarment by the original disciplining court may petition this court for relief from the rule of good standing pursuant to D.C.COLO.LCivR 83.3F or D.C.COLO.LCrR 57.5F, stating appropriate grounds for such relief." Accordingly,

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[1]A footnote in the original provided as follows:

The Tenth Circuit Disciplinary Panel summarily denied Smith's written requests for a Fifth Amendment due process hearing at which he would have the opportunity to present evidence (including expert testimony) on his defenses to the false and defamatory charges being brought against him, and in mitigation of any punishment to be imposed--in this case disbarment.

Smith states the following grounds for relief:

a. The procedure resulting in reciprocal discipline by the Colorado Supreme Court was so lacking in notice or opportunity to be heard as to deny due process. Specifically, the Chairman of the Colorado Supreme Court's Hearing Board refused to require the disciplinary prosecutor to present any evidence to prove the reciprocal discipline charges or to permit Smith to present any evidence in defense to these charges, including expert testimony from Smith's out-of-state expert witness flown in from New Jersey for that purpose—all in violation of the Colorado Rules of Disciplinary Procedure, which require a hearing to be held before disbarring an attorney from the practice of law in the State of Colorado. In the absence of a due process hearing, the Colorado Supreme Court was not in any position to agree with the Hearing Board's finding that Smith was accorded due process in the Tenth Circuit's disciplinary proceeding. The Colorado Supreme Court merely rubber-stamped the Tenth Circuit's transparently invalid disbarment order, while ignoring Smith's arguments in defense, in further violation of Smith's Fourteenth Amendment right to due process of law and his First Amendment right to access to the courts. *See Conn v.*

Gabbert, 526 U.S. 286 (1999), citing *Board of Regents v. Roth*, 408 U.S. 564, 572 (1972) (the liberty guaranteed by the Fourteenth Amendment "denotes not merely freedom from bodily restraint but also the right of the individual to contract, to engage in any of the common occupations of life . . . and generally to enjoy those privileges long recognized . . . as essential to the orderly pursuit of happiness of free men," quoting *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923); *Schware v. Board of Bar Examiners of N.M.*, 353 U.S. 232, 238-239 (1957) ("a State cannot exclude a person from the practice of law or from any other occupation in a manner or for reasons that contravene the Due Process or Equal Protection Clause of the Fourteenth Amendment," citing *Dent v. West Virginia*, 129 U.S. 114 (1889) and *Truax v. Raich*, 239 U.S. 33, 41 (1915)). *See also Corbitt v. Anderson*, 778 F.2d 1471 (10th Cir. 1985), stating that "the right to pursue one's chosen profession unfettered by state action which does not comport with the 14th Amendment, is referred to in *Schware v. Board of Bar Examiners*, 353 U.S. 232 (1957)," and holding that a damaged reputation plus "stigma" that forecloses "freedom to take advantage of other employment opportunities" makes out a prima facie case that a liberty interest has been violated, citing *Paul v. Davis*, 424 U.S. 693 (1975) and *Board of Regents v.*

Roth, 408 U.S. 564 (1972). *See also Razatos v. The Colorado Supreme Court*, 746 F.2d 1429 (10th Cir. 1984), stating that "Razatos asserts an important liberty interest," and holding that "it is clear that attorney discipline, although designed to protect the public, necessarily imposes a punishment or penalty on a lawyer that entitles him to procedural due process," citing *In re Ruffalo*, 390 U.S. 544, 550 (1968) (attorney discipline proceedings are "quasi-criminal" in nature).

b. The application of D.C.COLO.LCivR 83.3E would result in grave injustice. For more than nine years, the Colorado Supreme Court has refused to reinstate or readmit Smith to its bar despite the fact that its disbarment order was null and void *ab initio*, has been superseded by the Tenth Circuit's order reinstating or readmitting Smith to the Tenth Circuit bar, and/or is moot.[2] Under these circumstances,

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[2]A footnote in the original provided as follows:

In May of 2007, the Tenth Circuit reinstated Smith to its bar, and subsequently, the United States Court of Appeals for the Fifth Circuit and the United States District Court for the Northern District of Texas reinstated Smith to their bars based on the Tenth Circuit's order of reinstatement (the law of the case). Only the Colorado Supreme Court and the United States District Court for the District of Colorado have declined to reinstate Smith based on the Tenth Circuit's order of reinstatement. The United States Court of Appeals

> D.C.COLO.LCivR 83.3E is unconstitutional on its face and as applied to Smith in this case.
>
> For the foregoing reasons, Smith requests relief from the rule of good standing pursuant to D.C.COLO.LCivR 83.3F or D.C.COLO.LCrR 57.5F, including unconditional readmission or reinstatement to the bar of the United States District Court for the District of Colorado.
>
> . . .
>
> I declare under penalty of perjury that the foregoing is true and correct. Executed on November 3, 2008.

Contrary to the District Court Disciplinary Panel's findings, Smith did not fail to offer clear and convincing evidence that would support his Petition for Relief From the Rule of Good Standing Pursuant to D.C.COLO.LCivR 83.3F or D.C.COLO.LCrR 57.5F, and did not attempt to circumvent the Disciplinary Panel's two prior orders denying his applications for reinstatement to the District Court's Bar. However, the District Court Disciplinary Panel failed or refused to conduct an independent consideration of the Colorado Supreme Court's reciprocal discipline record to determine whether or

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for the Federal Circuit and the Texas Supreme Court declined to disbar Smith based on the Tenth Circuit's transparently invalid disbarment order.

not Smith fit within any of the exceptions to the rule of good standing. *Selling*, 243 U.S. at 51, 37 S.Ct. 377; *see also In re Dawson*, 609 F.2d 1139, 1142 (5th Cir. 1980). Under these circumstances, the District Court Disciplinary Panel failed or refused to follow its own local rules of practice, including D.C.COLO.LCivR 83.3F and D.C.COLO.LCrR 57.5F, thus depriving Smith of his Fifth Amendment right to substantive and procedural due process of law.

B. REVIEW IS WARRANTED BECAUSE THE LOCAL RULES OF PRACTICE OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO PROVIDING THAT AN ATTORNEY MEMBER OF THE DISTRICT COURT'S BAR MUST REMAIN IN GOOD STANDING IN THE BARS OF ALL STATE AND FEDERAL COURTS TO WHICH THE ATTORNEY MEMBER HAS BEEN ADMITTED IN ORDER TO BE REINSTATED OR READMITTED TO THE DISTRICT COURT'S BAR ARE INCONSISTENT WITH "THE PRINCIPLES OF RIGHT AND JUSTICE" NECESSARY TO PREVENT ARBITRARY DISCRIMINATION AGAINST SMITH, AS AN OUT-OF-STATE (TEXAS) ATTORNEY SEEKING REINSTATEMENT OR READMISSION TO THE DISTRICT COURT'S BAR.

Even if the District Court Disciplinary Panel followed its own local rules of practice and even if these local rules of practice pass constitutional muster, it was inconsistent with "the principles of right and justice" to require readmission to the Colorado Bar before readmission to the District Court's

Bar. *See Frazier v. Heebe*, 482 U.S. 641, 107 S.Ct. 2607, 96 L.Ed.2d 557 (1987). Smith is an attorney licensed by the Supreme Court of Texas, on active status in the State of Texas, as required by D.C.COLO.LCivR 83.3A and D.C.COLO.LCrR 57.5A. To also require Smith to be a member in good standing in the Colorado Bar constitutes arbitrary discrimination against Smith, as an out-of-state (Texas) attorney seeking reinstatement or readmission to the District Court's Bar. Furthermore, the Tenth Circuit's May 4, 2007 Order of Reinstatement is the law of the case which the United States District Court for the District of Colorado was bound to follow notwithstanding its own local rules of practice. (App. at 16a-18a.) By affirming the District Court's wrongful dismissal of Smith's lawsuit seeking to challenge the Colorado Supreme Court's continuing refusal to readmit or reinstate Smith to its Bar, *see Smith v. Colorado Supreme Court*, No. 08-1030 (10th Cir. July 24, 2007), the Tenth Circuit deprived Smith of his First Amendment right to access to the federal courts to litigate the constitutionality of the Colorado Supreme Court's conduct, for which Smith was seeking declaratory and injunctive relief.

C. REVIEW IS WARRANTED BECAUSE THE LOCAL RULES OF PRACTICE OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO PROVIDING THAT AN ATTORNEY MEMBER OF THE DISTRICT COURT'S BAR MUST REMAIN IN GOOD STANDING IN THE BARS OF ALL STATE AND FEDERAL COURTS TO WHICH THE ATTORNEY MEMBER HAS BEEN ADMITTED IN ORDER TO BE REINSTATED OR READMITTED TO THE DISTRICT COURT'S BAR CONSTITUTE AN ABUSE OF THE

DISTRICT COURT'S DISCRETION TO ADOPT LOCAL RULES THAT ARE NECESSARY TO CARRY OUT THE CONDUCT OF ITS BUSINESS UNDER 28 U.S.C. §§ 1654, 2071 AND FED. R. CIV. P. 83.

Even if the District Court Disciplinary Panel was not required to follow circuit precedent and even if it was not inconsistent with "the principles of right and justice" to require readmission to the Colorado Bar before readmission to the District Court's Bar, the local rules of practice of the United States District Court for the District of Colorado providing that an attorney member of the District Court's Bar must remain in good standing in the bars of all state and federal courts to which the attorney member has been admitted in order to be reinstated or readmitted to the District Court's Bar constitute an abuse of the District Court's discretion to adopt local rules that are necessary to carry out the conduct of its business under 28 U.S.C. §§ 1654, 2071 and Fed. R. Civ. P. 83. *See Frazier v. Heebe*, 482 U.S. 641, 107 S.Ct. 2607, 96 L.Ed.2d 557 (1987). The District Court's local rules of practice are not rationally related to any legitimate business purpose, and, in fact, discriminate arbitrarily against Smith, as an out-of-state (Texas) attorney seeking reinstatement or readmission to the District Court's Bar. For this reason, the District Court has exceeded the scope of the discretion delegated to it by the Congress and this Court.

D. REVIEW IS WARRANTED BECAUSE CHIEF JUDGE NOTTINGHAM WAS

REQUIRED TO DISQUALIFY HIMSELF FROM THE PROCEEDING ON SMITH'S APPLICATION FOR REINSTATEMENT OR READMISSION TO THE DISTRICT COURT'S BAR IN ACCORDANCE WITH 28 U.S.C. § 455(A) AND (B); HIS CONDUCT CONSTITUTED A DENIAL OF FIFTH AMENDMENT DUE PROCESS OF LAW.

Under 28 U.S.C. § 455(a), "[a]ny justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned," and, under § 455(b), "[h]e shall also disqualify himself . . . (1) [w]here he has a personal bias or prejudice concerning a party . . . ." In addition to imposing harsh and unjustified sanctions leading to Smith's suspension and disbarment from practice in the Tenth Circuit, the District Court, and the Colorado Supreme Court, Chief Judge Nottingham authored the District Court Disciplinary Panel's order disbarring Smith without holding a due process hearing on the false and defamatory reciprocal discipline charges being brought against him. *See In re Smith*, No. 96-DP-4 (D. Colo. April 26, 1996). Under these circumstances, Chief Judge Nottingham's impartiality might reasonably be questioned, and he was required to disqualify himself from the proceeding on Smith's Application for Readmission or Reinstatement to the District Court's Bar. Furthermore, Chief Judge Nottingham's personal bias or prejudice against Smith tainted or poisoned the proceeding, making it impossible for Smith to receive a fair and impartial

decision on his Application.[3] Under all the facts and circumstances, Chief Judge Nottingham was required to disqualify himself from the proceeding on Smith's Application in accordance with 28 U.S.C. § 455(a) and (b). Smith also submits that Chief Judge Nottingham's conduct constituted a denial of Fifth Amendment due process of law. *See Caperton v. A.T. Massey Coal Co.*, 129 S.Ct. 2252 (2009) (the probability of actual bias on the part of the judge or decisionmaker is too high to be constitutionally tolerable where a judge had no pecuniary interest in the case but had determined in an earlier proceeding whether criminal charges should be brought and then proceeded to try and convict the petitioner). Attorney discipline proceedings are quasi-criminal in nature. *See In re Ruffalo*, 390 U.S. 544, 550 (1968). Chief Judge Nottingham's participation in the proceeding on Smith's Application for Readmission or Reinstatement to the District Court's Bar after participating in Smith's reciprocal discipline proceeding, in which Smith was disbarred by the District Court Disciplinary Panel without holding a due process hearing on the false and defamatory reciprocal discipline charges being brought against him, was constitutionally intolerable because of the probability of actual bias on the part of Chief Judge Nottingham, who had imposed harsh and unjustified sanctions of more than $35,000 against Smith in *Dunkin v. Louisiana-Pacific Corp.*, 89 F.3d 849 (10th Cir. 1996), *cert. denied*, 117 S.Ct. 435 (1996); *see also Dunkin v. Louisiana-Pacific Corp.*, 120 F.3d 270

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[3]Chief Judge Nottingham has resigned from the District Court bench in connection with other charges of judicial misconduct.

(10th Cir. 1997) (refusal to vacate monetary sanctions after case settlement), *cert. denied,* 118 S.Ct. 884 (1998).

E. REVIEW IS WARRANTED BECAUSE THE DISTRICT COURT DISCIPLINARY PANEL ABUSED ITS DISCRETION AND/OR COMMITTED REVERSIBLE ERROR BY REFUSING TO DISCLOSE ITEMS OMITTED FROM THE RECORD ON APPEAL, INCLUDING BUT NOT LIMITED TO, THE RECOMMENDATION OF THE COMMITTEE ON CONDUCT ON SMITH'S APPLICATION FOR READMISSION OR REINSTATEMENT TO THE DISTRICT COURT'S BAR, AS WELL AS THE UNDERLYING DOCUMENTATION, OR TO SUPPLEMENT THE RECORD ON APPEAL WITH THE OMITTED ITEMS, WHICH WERE NECESSARY FOR SMITH TO BE ABLE TO PREPARE AND SUBMIT HIS BRIEF AND APPENDIX ON APPEAL—IN VIOLATION OF FED. R. APP. P. 10(E) AND THE FIFTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.

In his Motion for Disclosure of Omitted Items and for Supplementation of the Record on Appeal, Smith said:

> Pursuant to Fed. R. App. P. 10(e), Appellant David Lee Smith ("Smith"), by and through counsel, respectfully submits his Motion for Disclosure of Omitted Items

and for Supplementation of the Record on Appeal:

. . .

Notice of appeal was filed in the United States District Court for the District of Colorado on September 3, 2008.

Preliminary record (sealed) was filed in the United States Court of Appeals for the Tenth Circuit on September 9, 2008.

Supplemental preliminary record (sealed) was filed in the Court of Appeals on September 22, 2008.

Notice that the record is completed was filed by the Clerk of the District Court on January 28, 2009.

. . .

Upon contacting the Office of the Clerk of the United States District Court for the District of Colorado, Smith's counsel was advised that no stipulation would be made with respect to items omitted from the record on appeal, including but not limited to, the recommendation of the Committee on Conduct on Smith's Application for Reinstatement or Readmission to the Bar of the Court, filed August 13, 2007, as well as the underlying documentation. Smith's counsel was advised that due to the confidential or privileged nature of the

omitted items, disclosure would not be made and the record on appeal would not be supplemented in the absence of an order from the Tenth Circuit.

No due process hearing was held before denying Smith's Application for Reinstatement or Readmission to the Bar of the Court, and Smith does not know the legal or factual basis for the denial of his application. Smith's counsel cannot file Smith's brief and appendix (due March 9, 2009) unless the omitted items are promptly disclosed and the record on appeal is supplemented.

Smith is not aware of any confidentiality or privilege that would be breached by the disclosure of the omitted items. Smith hereby waives any confidentiality or privilege that applies to the omitted items.

. . .

For the foregoing reasons, Smith requests an order requiring disclosure of the omitted items and supplementation of the record on appeal. If any claim of confidentiality or privilege is being made, Smith requests the Tenth Circuit to conduct an in camera inspection of the omitted items.

In the absence of the omitted items, Smith was deprived of his Fifth Amendment right to due process of law.

F. REVIEW IS WARRANTED BECAUSE SENIOR CIRCUIT JUDGE BRORBY WAS REQUIRED TO DISQUALIFY HIMSELF FROM SMITH'S APPEAL IN ACCORDANCE WITH 28 U.S.C. § 455(A) AND (B); HIS FAILURE TO DISQUALIFY HIMSELF FROM SERVING ON THE THREE-JUDGE PANEL HEARING SMITH'S APPEAL (AND, INSTEAD, ACTUALLY AUTHORING THE ORDER AND JUDGMENT DENYING THE APPEAL) CONSTITUTED A DENIAL OF FIFTH AMENDMENT DUE PROCESS OF LAW.

Considering the fact that Senior Circuit Judge Wade Brorby (the author of the Tenth Circuit Panel's Order and Judgment) was a member of the Tenth Circuit Disciplinary Panel that disbarred Smith in 1996 without holding a Fifth Amendment due process hearing on the false and defamatory attorney discipline charges being brought against him, Circuit Judge Brorby's impartiality might reasonably be questioned, and, as a result, he was required to disqualify himself from Smith's appeal. *See In re Smith*, 76 F.3d 335 (10th Cir. 1996) (*per curiam*), *cert. denied*, 519 U.S. 871 (1996); *see also In re Smith*, 10 F.3d 723 (10th Cir. 1993) (indefinite suspension), *cert. denied*, 513 U.S. 807 (1994). Furthermore, based on Circuit Judge Brorby's involvement in the Tenth Circuit Disciplinary Panel's constitutionally defective disbarment of Smith, it is not unreasonable to conclude that Circuit Judge Brorby's personal bias or prejudice

against Smith tainted or poisoned the appellate proceeding, making it impossible for Smith to receive a fair and impartial decision. *Id.* Therefore, Circuit Judge Brorby was required to disqualify himself from Smith's appeal in accordance with 28 U.S.C. § 455(a) and (b). *Id.* Under all the facts and circumstances, Circuit Judge Brorby's failure to disqualify himself from serving on the Tenth Circuit Panel hearing Smith's appeal (and, instead, actually authoring the Order and Judgment denying the appeal) constituted a denial of Fifth Amendment due process of law under this Court's decision in *Caperton v. A.T. Massey Coal Co.*, 129 S.Ct. 2252 (2009) (the probability of actual bias on the part of the judge or decisionmaker is too high to be constitutionally tolerable where a judge had no pecuniary interest in the case but had determined in an earlier proceeding whether criminal charges should be brought and then proceeded to try and convict the petitioner). Attorney discipline proceedings are "quasi-criminal" in nature. *See In re Ruffalo*, 390 U.S. 544, 550 (1968). Senior Circuit Judge Brorby's participation in the proceeding on Smith's appeal after participating in Smith's attorney discipline proceeding, in which Smith was disbarred by the Tenth Circuit Disciplinary Panel without holding a Fifth Amendment due process hearing at which Smith would have the opportunity to present evidence (including expert testimony) on his defenses to the false and defamatory charges being brought against him, and in mitigation of any punishment to be imposed—in this case disbarment, was constitutionally intolerable because of the probability of actual bias on the part of Senior

Circuit Judge Brorby, who had participated in numerous proceedings imposing harsh and unjustified sanctions and discipline against Smith. *See, e.g., In re Smith*, 10 F.3d 723 (10th Cir. 1993) (indefinite suspension), *cert. denied*, 513 U.S. 807 (1994); *In re Smith*, 76 F.3d 335 (10th Cir. 1996) (*per curiam*) (disbarment), *cert. denied*, 519 U.S. 871 (1996); *DeHerrera v. City and County of Denver*, 89 F.3d 849 (10th Cir. 1996) (monetary sanctions); *Dunkin v. Louisiana-Pacific Corp.*, 89 F.3d 849 (10th Cir. 1996) (monetary sanctions), *cert. denied*, 117 S.Ct. 435 (1996); *Qualls v. Regional Transportation District*, No. 05-1385 (10th Cir. July 23, 1996) (monetary sanctions); *Howard v. Mail-Well Envelope Co.*, 150 F.3d 1227 (10th Cir. 1998) (*en banc*) (*per curiam*) (prospective filing restrictions after case dismissal); *Smith v. United States of America*, No. 08-1418 (10th Cir. July 6, 2009) (case dismissal).

G. REVIEW IS WARRANTED BECAUSE IN APPROVING THE DISTRICT COURT DISCIPLINARY PANEL'S REFUSAL TO REINSTATE OR READMIT SMITH TO THE DISTRICT COURT'S BAR, THE TENTH CIRCUIT HAS AGAIN GROSSLY ABUSED ITS INHERENT POWER TO IMPOSE ATTORNEY DISCIPLINE AND OTHER SANCTIONS AGAINST SMITH, AND HAS SO FAR DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS, OR SANCTIONED SUCH A DEPARTURE BY THE DISTRICT COURT AS TO CALL FOR AN EXERCISE OF THIS COURT'S SUPERVISORY POWER.

The Tenth Circuit has a long history of imposing harsh and unjustified attorney discipline and other sanctions against Smith without due process of law. *See, e.g., Casillan v. Regional Transportation District,* 986 F.2d 1426 (10th Cir. 1993) (monetary sanctions after case dismissal), *cert. denied,* 512 U.S. 1221 (1994); *In re Smith,* 10 F.3d 723 (10th Cir. 1993) (indefinite suspension), *cert. denied,* 513 U.S. 807 (1994); *In re Smith,* 76 F.3d 335 (10th Cir. 1996) (*per curiam*) (disbarment), *cert. denied,* 519 U.S. 871 (1996) (1996); *DeHerrera v. City and County of Denver,* 89 F.3d 849 (10th Cir. 1996) (monetary sanctions); *Dunkin v. Louisiana-Pacific Corp.,* 89 F.3d 849 (10th Cir. 1996) (monetary sanctions), *cert. denied,* 117 S.Ct. 435 (1996); *Qualls v. Regional Transportation District,* No. 05-1385 (10th Cir. July 23, 1996) (monetary sanctions); *Dunkin v. Louisiana-Pacific Corp.,* 120 F.3d 270 (10th Cir. 1997) (refusal to vacate monetary sanctions after case settlement), *cert. denied,* 118 S.Ct. 884 (1998); *Howard v. Mail-Well Envelope Co.,* 150 F.3d 1227 (10th Cir. 1998) (*en banc*) (*per curiam*) (prospective filing restrictions after case dismissal). More recently, *see Smith v. Commissioner of Internal Revenue,* 10 F.App'x 666 (10th Cir. 2005) (monetary sanctions after case dismissal); *Smith v. Seymour,* 229 F.App'x 811 (10th Cir. 2007) (case dismissal); *Smith v. Colorado Supreme Court,* No. 08-1030 (10th Cir. July 24, 2007) (case dismissal); *In re Smith,* No. 08-822 (10th Cir. September 16, 2008) (admonition); *Smith v. United States of America,* No. 08-1418 (10th Cir. July 6, 2009) (case dismissal). In these cases, the Tenth Circuit grossly abused its inherent power

to impose attorney discipline and other sanctions against Smith. *See Chambers v. NASCO,* 501 U.S. 32, 112 S. Ct. 12, 115 L.Ed.2d 1097 (1991); *Roadway Express v. Piper,* 447 U.S. 752, 100 S.Ct. 2455, 65 L.Ed.2d 488 (1980). In approving the District Court Disciplinary Panel's refusal to reinstate or readmit Smith to the District Court's Bar, the Tenth Circuit has again abused its inherent power to impose attorney discipline and other sanctions against Smith, and has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by the District Court as to call for an exercise of this Court's supervisory power. *Id.*

Respectfully submitted,

/s/ M. Julia Hook

M. JULIA HOOK
Attorney at Law

5800 E. 6th Avenue
Denver, CO 80220
(303) 321-7403

COUNSEL OF RECORD
FOR PETITIONER
DAVID LEE SMITH

APPENDIX

UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

In re:

DAVID LEE SMITH,

Appellant.

No. 08-1323
(D.C. No. 96-DP-4)
(D. Colo.)

Filed May 12, 2009

ORDER AND JUDGMENT[1]

Before **O'Brien**, Circuit Judge, **Brorby**, Senior Circuit Judge, and **Gorsuch**, Circuit Judge

David Lee Smith appeals from an order denying his petition for reinstatement to the bar of the United States District Court for the District of Colorado. He also appeals orders denying his motion to alter or amend and his petition for relief from the district court's rule of good standing. He argues that

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[1]A footnote in the original provided as follows:

After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this appeal. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

the district court's three-judge Disciplinary Panel abused its discretion by denying him reinstatement to the district court bar; that the Disciplinary Panel denied him due process by refusing to disclose items from the record; than then Chief Judge Nottingham should have recused himself pursuant to 28 U.S.C. § 455(a) and (b); and that the Disciplinary Panel erred in denying his petition for relief from the rule of good standing. We have jurisdiction to review these orders, *see In re Martin*, 400 F.3d 836, 840 (10th Cir. 2005), and we affirm.

On November 29, 1993, we suspended Mr. Smith from practicing law before this court. *In re Smith*, 10 F.3d 723, 724 (10th Cir. 1993) (per curiam), *cert. denied*, 513 U.S. 807 (1994). And on February 13, 1996, we converted that suspension to a disbarment because Mr. Smith continued to practice before this court despite his suspension. *In re Smith*, 76 F.3d 335, 336 (10th Cir. 1996) (per curiam), *cert. denied*, 519 U.S. 871 (1996). Based on our disbarment, the Colorado district court disbarred Mr. Smith on April 26, 1996, and the Colorado Supreme Court disbarred him on October 14, 1999, *In re Smith*, 989 P.2d 165 (Colo. 1999) (per curiam).

On May 4, 2007, we granted Mr. Smith's motion for reinstatement to practice before this court, provided that he meet certain conditions. *In re Smith*, No. 93-631, 2007 WL 4953041 (10th Cir. May 4, 2007). Mr. Smith met these conditions. Based on his May 17, 2007, reinstatement, he then applied for reinstatement to the bar of the Colorado district

court.[2] The district court's three-judge Disciplinary Panel denied reinstatement based on the recommendation of the Committee on Conduct and on the Panel's independent review, because Mr. Smith remained disbarred by the Colorado Supreme Court. The Panel reasoned that under the district court's local rules, "an attorney admitted to the [district court] bar . . . must remain in good standing in all courts where admitted; that the status of good standing means not being subject to suspension or disbarment by any court for any reason; and that an attorney not in good standing is not to practice before [the district] court. D.C.Colo.L.Civ.R. 83.3E and D.C.Colo.L.Cr.R. 57.5E." Aplt. App. at 7 (Order Denying Reinstatement).

Mr. Smith then filed a motion to alter or amend judgment, asserting that the Disciplinary Panel's interpretation of the local rules deprived him of substantive and/or procedural due process since the Tenth Circuit had reinstated him and the Colorado Supreme Court's continued disbarment was improper in light of the Tenth Circuit's reinstatement. Additionally, he criticized the Colorado Supreme Court for failing to hold a due process hearing before imposing reciprocal discipline. The Disciplinary Panel denied Mr. Smith's motion.

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[2]A footnote in the original provided as follows:

> The Fifth Circuit and the Northern District of Texas reinstated Mr. Smith to practice before those courts based on our order of reinstatement.

Subsequently, Mr. Smith filed a petition for relief from the rule of good standing on the grounds that (1) the Colorado Supreme Court's reciprocal discipline denied him due process because the court's Hearing Board did not hear evidence concerning the reciprocal discipline charges; and (2) failure to reinstate him would be a grave injustice since the Tenth Circuit had readmitted him. The Disciplinary Panel reviewed the recommendation of the Committee on Conduct and the disciplinary file and denied the petition, finding that Mr. Smith failed to offer clear and convincing evidence to support his petition and that the petition was merely an attempt to circumvent the Disciplinary Panel's prior two orders denying reinstatement. The Disciplinary Committee reiterated that Mr. Smith remained disbarred by the Colorado Supreme Court.

Mr. Smith appeals from all three of the Disciplinary Panel's orders denying him readmission to the Colorado district bar. We review the denial of reinstatement under the abuse of discretion standard. *See Martin*, 400 F.3d at 841. Our review of legal issues, however, is plenary. *See id.*

Mr. Smith first argues that he was not given notice that the Disciplinary Panel would apply the rule of good standing, *see* D.C.Colo.L.Civ.R. 83.3E and D.C.Colo.L.Cr.R. 57.5E, when assessing his petition for reinstatement to the district court's bar. To the contrary, the form application for reinstatement that Mr. Smith submitted to the district court begins with the very notification that

the good-standing rules apply. Aplt. App. at 14. Those rules, as relevant here, state that

> [a]n attorney admitted to the bar of this court must remain in good standing in all courts where admitted. "In good standing" means not subject to suspension or disbarment by any court for any reason. An attorney who is not in good standing shall not practice before the bar of this court . . .

D.C.Colo.L.Civ.R.83.3E; D.C.Colo.L.Cr.R 57.5E. Additionally, the form cited to Local Rules 83.5I and 57.7I its title and twice in its body. Aplt. App. at 14-15. These rules state that:

> An attorney applying for reinstatement or readmission to this court following reinstatement or readmission by the original disciplining court who remains . . . disbarred in a court other than the original disciplining court or this court is subject to D.C.COLO.LCivR 83.3E and D.C.COLO.LCrR 57.5E requiring attorneys to be in good standing where admitted in order to be or remain admitted to the bar of this court. An attorney . . . disbarred automatically in a court other than the original disciplining court or this court as a result of . . . disbarment by the original disciplining court may petition this court for relief from the rule of good standing pursuant to D.C.COLO.LCivR 83.3F or

D.C.COLO.LCrR 57.5F, stating appropriate grounds for relief.

Mr. Smith certified in the reinstatement application that he had read and was familiar with these local rules. Aplt. App. at 15.

Without question, "the federal district court has a right to establish its own standards for admission to practice." *Mattox v. Disciplinary Panel of U.S. Dist. Ct. for Dist. of Colo.*, 758 F.2d 1362, 1364 (10th Cir. 1985); *see also Chambers v. NASCO, Inc.*, 501 U.S. 32, 43 (1991) deciding district court has inherent authority to control admission to its bar). The Disciplinary Panel adhered to the court's own rules in denying Mr. Smith readmission. *See Mattox*, 758 F.2d at 1364 (stating that proper question on appeal is "whether the district court has adhered to its own rules"). Mr. Smith has not been reinstated to the Colorado Supreme Court and his membership in that bar is required before he can be reinstated to the district court's bar. The district court therefore did not abuse its discretion in denying his petition for reinstatement. *Cf. In re Kandekore*, 460 F.3d 276, 280 (2d Cir. 2006) (per curiam) (holding "that the district court could properly deny [attorney's] readmission on the ground that he had not been readmitted to the bar of the state of New York"). Nor did the district court abuse its discretion in denying his motion to alter or amend the judgment.

Mr. Smith next argues that he was denied his Fifth Amendment right to due process because the Disciplinary Panel either erred in refusing to disclose

items from the record on appeal, including the Committee on Conduct's recommendation on his application for reinstatement and the underlying documentation, or erred in refusing to supplement the record on appeal with the omitted items. Mr. Smith's argument is conclusory, and he cites no authority requiring the Disciplinary Panel to disclose the items. Because this issue is not adequately briefed, we deem it waived.[3] *See Utahns for Better Transp. v. U.S. Dep't of Transp.*, 305 F.3d 1152, 1175 (10th Cir. 2002).

Mr. Smith also argues that former Chief Judge Nottingham should have disqualified himself from

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[3]A footnote in the original provided as follows:

> Mr. Smith's total discussion of the issue consists of the following:
>
> > The Disciplinary Panel also abused its discretion and/or committed reversible error by refusing to disclose items omitted from the record on appeal, including but not limited to, the recommendation of the Committee on Conduct on Smith's Application for reinstatement to the District Court's bar, as well as the underlying documentation, or to supplement the record on appeal with the omitted items, which were necessary for Smith to be able to prepare and submit his brief and appendix on appeal. Therefore, in the absence of the omitted items, Smith was deprived of his Fifth Amendment right to due process of law.
>
> Aplt. Br. At 11 (footnote citing to appendix omitted).

the Disciplinary Panel under 28 U.S.C. § 455(a) an (b) due to his bias against Mr. Smith. Mr. Smith, however, never asserted a bias argument before the Disciplinary Panel. Thus, this argument is waived. *See Rosewood Servs., Inc. v. Sunflower Diversified Servs., Inc.*, 413 F.3d 1163, 1167 (10th Cir. 2005).

Even if we considered this argument, we would conclude that Mr. Smith did not show bias. Contrary to Mr. Smith's contention, the judge's sanctioning him during prior district court proceedings and reciprocally disbarring him without holding a due process hearing on the reciprocal discipline charges are insufficient to suggest partiality requiring recusal. These bias accusations are grounded primarily in prior judicial rulings against Mr. Smith, which almost never show partiality requiring a judge's recusal. *See Liteky v. United States*, 510 U.S. 540, 555 (1994). Also, Mr. Smith contends that former Chief Judge Nottingham's bias tainted the proceedings making it impossible for Mr. Smith to receive a fair and impartial decision on his application for reinstatement. This contention is wholly conclusory and therefore deemed waived. *See Utahns for Better Transp.*, 305 F.3d at 1175. In any event, there were two other judges on the Disciplinary Panel deciding whether to reinstate Mr. Smith, Mr. Smith does not argue that either of those judges was biased, and the Panel's decision against reinstatement was unanimous.

Lastly, Mr. Smith argues that he presented clear and convincing evidence that the Disciplinary Panel should have granted his petition for relief from the

rule of good standing and that he was not merely attempting to circumvent the Disciplinary Panel's two prior orders denying reinstatement. To support his argument, he merely quotes from his petition. But the quote does not address the Disciplinary Panel's order and reasoning. *Cf. Semsroth v. City of Wichita*, 555 F.3d 1182, 1186 n. 5 (10th Cir. 2009) (deciding that where appellate brief was verbatim copy of summary judgment response, brief "inherently fail[ed] to address in a direct way the decision under review and, as a result, does not effectively come to grips with the district court's analysis of the deficiencies in [appellants'] case"). Thus, he fails to show by clear and convincing evidence that he should be relieved from the rule of good standing. *See, e.g., In re Oliveras Lopez de Victoria*, 561 F.3d 1, 4 (1st Cir. 2009) (per curiam); *In re Kramer*, 282 F.3d 721, 724, 725 (9th Cir. 2002). Nor does he show that he was not merely trying to circumvent the Disciplinary Panel's first two orders.

Because Mr. Smith has failed to show any defect in the Disciplinary Panel's proceedings denying him reinstatement or relief from the good standing requirement, we **AFFIRM** the district court's orders.

Entered for the Court

Wade Brorby
Senior Circuit Judge

UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

In re: No. 08-1323

DAVID LEE SMITH,

Appellant.

Filed May 28, 2009

ORDER

Before **O'BRIEN**, Circuit Judge, **BRORBY**, Senior Circuit Judge, and **GORSUCH**, Circuit Judge

Appellant's petition for rehearing is denied.

The petition for rehearing en banc was transmitted to all of the judges of the court who are in regular active service. As no member of the panel and no judge in regular active service on the court requested that the court be polled, that petition is also denied.

Entered for the Court,

Elisabeth A. Shumaker,
Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

IN THE MATTER OF Disciplinary Action
DAVID LEE SMITH No. 96-DP-4

Filed August 4, 2008

ORDER DENYING REINSTATEMENT

This matter is before the Disciplinary Panel of the court on the Application for Reinstatement or Readmission to the Bar of the Court filed by David Lee Smith ("Applicant"), which was filed on August 13, 2007. The Panel has also before it a recommendation of the Committee on Conduct. Applicant was disbarred by this court on April 26, 1996. In the United States Tenth Circuit Court of Appeals, after having been suspended and then disbarred, applicant has successfully sought reinstatement, effective May 4, 2007. He seeks reinstatement in this court on the basis of his status of readmission in the Tenth Circuit. However, as of the date of this order, and as acknowledged by the applicant, he remains disbarred by the Colorado Supreme Court.

This court's local rules of practice provide that an attorney admitted to the bar of this court must remain in good standing in all courts where admitted; and the status of good standing means not being subject to suspension or disbarment by any court for any reason; and that an attorney not in good standing is not to practice before this court.

D.C.COLO.LCivR.83.3E and D.C.COLO.LCrR.57.5E. Accordingly, it is

ORDERED that the Application for Reinstatement or Readmission to the Bar of the Court is DENIED. It is

FURTHER ORDERED that the December 11, 2006 Motion to Rehear, Reconsider and Vacate the Court's Order of December 5, 2006 (an order which denied a previous request for reinstatement), which remains pending, is DENIED.

Dated at Denver, Colorado on this 4th day of August, 2008.

BY THE DISCIPLINARY
PANEL OF THE COURT

Edward W. Nottingham, Judge

Wiley Y. Daniel, Judge

Walker D. Miller, Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

IN THE MATTER OF	Disciplinary Action
DAVID LEE SMITH	No. 96-DP-4

Filed September 18, 2008

ORDER DENYING MOTION TO ALTER OR AMEND JUDGMENT

Before the Disciplinary Panel is Motion to Alter or Amend Judgment filed August 15, 2008 by Respondent, David Lee Smith. Mr. Smith seeks to alter or amend the order of the Disciplinary Panel, which denied his application for reinstatement based on the recommendation of the Committee on Conduct and the Panel's independent review of the record. Having reviewed the grounds proffered by Respondent in support of his motion, the Panel finds no support to disturb its prior order. Accordingly, it is

ORDERED that the Motion to Alter or Amend Judgment is DENIED.

Dated at Denver, Colorado, this 18th day of September, 2008.

BY THE DISCIPLINARY
PANEL OF THE COURT

Edward W. Nottingham, Chief Judge

Wiley Y. Daniel, Judge

Walker D. Miller, Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

IN THE MATTER OF
DAVID LEE SMITH

Disciplinary Action
No. 96-DP-4

Filed February 20, 2009

ORDER DENYING PETITION FOR RELIEF FROM RULE OF GOOD STANDING

Before the Disciplinary Panel is the Petition for Relief From the Rule of Good Standing filed by David Lee Smith on November 3, 2008 pursuant to D.C.COLO.LCivR 83.3F. After reviewing the recommendation of the Committee on Conduct and the disciplinary file on this matter, the Disciplinary Panel finds that Mr. Smith has failed to offer clear and convincing evidence that would support his petition. The Petition constitutes nothing more than

a thinly veiled attempt to circumvent the Disciplinary Panel's two prior orders denying Mr. Smith's applications for reinstatement to the bar. For all the reasons stated in the Disciplinary Panel's prior orders, particularly in light of the fact that Mr. Smith remains disbarred by the Supreme Court of Colorado, it is

ORDERED that the Application for Relief from the Rule of Good Standing is DENIED.

Dated at Denver, Colorado this 20th day of February, 2009.

BY THE DISCIPLINARY
PANEL OF THE COURT

_____

Edward W. Nottingham, Chief Judge

_____

Wiley Y. Daniel, Judge

_____

Walker D. Miller, Judge

UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

In re: No. 93-631

DAVID LEE SMITH,

Appellant.

ORDER

Filed May 4, 2007

Before **KELLY**, **TYMKOVICH**, and **GORSUCH**, Circuit Judges

David L. Smith has tendered by counsel a "Verified Petition for Reinstatement to the Tenth Circuit Bar." Mr. Smith was previously suspended from practicing before this court and that suspension was later converted into disbarment when Mr. Smith continued to practice before the court despite the suspension. *See In re Smith*, 76 F.3d 335 (10th Cir. 1996), *cert. denied*, 519 U.S. 871, *reh'g denied*, 519 U.S. 988 (1996); *In re Smith*, 10 F.3d 723 (10th Cir. 1993), *cert. denied*, 513 U.S. 807, *reh'g denied*, 513 U.S. 1033 (1994). Mr. Smith seeks reinstatement to again practice before the U.S. Court of Appeals for the Tenth Circuit.

The court has previously determined that Mr. Smith "may apply for reinstatement to our bar when he can demonstrate that each sanction order of this court or the district court has been satisfied." *In re*

Smith, 10 F.3d at 724. In the pending petition, Mr. Smith asserts that he has attached documents demonstrating that each sanction order imposed by this court or the district court has been satisfied. The attachments accompanying the motion are: (1) a copy of a "Motion to Vacate Suspension Order" filed in this court on November 29, 1994 in this same proceeding that was denied July 18, 1995; (2) a three page "Notice of Settlements" filed in this court on January 17, 1995 in this same proceeding in which Mr. Smith asserted that he had reached settlements in half of the cases which underlie his suspension; (3) an "Accounting" filed in this court on February 2, 1995 in connection with this same proceeding; and (4) two 2007 letters to the U.S. Bankruptcy Court for the District of Colorado, one from the General Counsel for the Regional Transportation District of Denver and the other from Patricia A. Coan, relating to a bankruptcy proceeding captioned as *In re M. Julia Hook and David L. Smith*, in which the senders state they are electing not to file proofs of claims. Mr. Smith asserts these letters are from attorneys awarded sanctions against him in *Casillan v. RTD*, 986 F.2d 1426 (10th Cir. 1993), *cert. denied*, 512 U.S. 1221 (1994).

We find the documentation, together with Mr. Smith's representations, sufficient to demonstrate that the sanctions previously imposed by this court and the U.S. District Court for the District of Colorado have been satisfied and accordingly permit the application for reinstatement to be filed and considered on the merits. The clerk is directed to

show the "Verified Petition for Reinstatement to the Tenth Circuit Bar" as filed as of the date of tender.

Mr. Smith has been suspended from practicing law in this court since November 29, 1993 and has been disbarred from practicing here since February 13, 1996. We are inclined to give Mr. Smith the benefit of the doubt that he is now capable of practicing in an ethical and professionally responsible manner in this court, and that he will abide by this court's rules and directives. Accordingly, the "Verified Petition for Reinstatement to the Tenth Circuit Bar" is granted as follows.

David L. Smith may reapply for admission to practice before this court, conditioned on the payment of a new registration fee (*see* Plan Section 10.7) and certification by the bar examiners of a state or other jurisdiction of his admission to practice in that jurisdiction (*see* Fed. R. App. P. 46(a)(1); Plan Section 10.6). An application form will be provided to Mr. Smith with this order.

Entered for the Court

ELIZABETH A.
SHUMAKER
Clerk of Court

by:
Douglas E. Cressler
Chief Deputy Clerk

UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

In re: No. 08-1323

DAVID LEE SMITH,

Appellant.

Filed February 13, 2009

ORDER

This matter is before the court on Appellant's Motion for Disclosure of Omitted Items and for Supplementation of the Record on Appeal (the "Motion").

Because Appellant is represented by retained counsel, he must file an appendix with his brief. See Fed. R. App. P. 30; 10th Cir. R. 10.2(B), 30. The district court will not forward a "record on appeal" to this court; rather, the record is retained in the district court. See 10th Cir. R. 11.1. Because no record on appeal exists that could be supplemented with any document, the Motion is denied.

To the extent that Appellant believes that the record the district court prepared does not disclose what actually happened there, Appellant should file a motion in the district seeking correction or modification of the record under Federal Appellate Rule 10(e)(1).

Entered for the Court,
ELISABETH A.
SHUMAKER, Clerk

by: Lara Smith
Counsel to the Clerk

UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

In re: No. 08-1323

DAVID LEE SMITH,

Appellant.

Filed February 20, 2009

ORDER

Before **KELLY** and **McCONNELL**, Circuit Judges

This matter is before the court on the "Appellant's Motion for Court Review of Clerk's Order." Appellant seeks review of an order filed on February 13, 2009, denying "Appellant's Motion for Disclosure of Omitted Items and for Supplementation of the Record on Appeal."

"Appellant's Motion for Court Review of Clerk's Order" is denied. To the extent appellant believes that the record does not disclose what actually happened in the district court, he may file a motion in the district court seeking correction or

modification of the record in accordance with this court's February 13, 2009 order denying his original motion. *See* Fed. R. App. P. 10(e).

Entered for the Court
ELISABETH
SHUMAKER,
Clerk of Court
by:
Christine Van Coney
Counsel to the Clerk

28 U.S.C. § 455

(a) Any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.
(b) He shall also disqualify himself in the following circumstances:
(1) Where he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding
. . . .

28 U.S.C. § 1654

In all courts of the United States the parties may plead and conduct their own cases personally or by counsel as, by the rules of such courts, respectively, are permitted to manage and conduct causes therein.

28 U.S.C. § 2071

(a) The Supreme Court and all courts established by Act of Congress may from time to time prescribe rules for the conduct of their business. Such rules shall be consistent with Acts of Congress and rules of practice and procedure prescribed under section 2072 of this title.
(b) Any rule prescribed by a court, other than the Supreme Court, under subsection (a) shall be prescribed only after giving appropriate public notice and an opportunity for comment. Such rule shall take effect upon the date specified by the prescribing court and shall have such effect on pending proceedings as the prescribing court may order.
(c)
(1) A rule of a district court prescribed under subsection (a) shall remain in effect unless modified or abrogated by the judicial council of the relevant circuit.
(2) Any other rule prescribed by a court other than the Supreme Court under subsection (a) shall remain in effect unless modified or abrogated by the Judicial Conference.
(d) Copies of rules prescribed under subsection (a) by a district court shall be furnished to the judicial council, and copies of all rules prescribed by a court other than the Supreme Court under subsection (a) shall be furnished to the Director of the Administrative Office of the United States Courts and made available to the public.
(e) If the prescribing court determines that there is an immediate need for a rule, such court may proceed under this section without public notice and

opportunity for comment, but such court shall promptly thereafter afford such notice and opportunity for comment.
(f) No rule may be prescribed by a district court other than under this section.

Fed. R. App. P. 10(e)

(1) If any difference arises about whether the record truly discloses what occurred in the district court, the difference must be submitted to and settled by that court and the record conformed accordingly.
(2) If anything material to either party is omitted from or misstated in the record by error or accident, the omission or misstatement may be corrected and a supplemental record may be certified and forwarded:
(A) on stipulation of the parties;
(B) by the district court before or after the record has been forwarded; or
(C) by the court of appeals.
(3) All other questions as to the form and content of the record must be presented to the court of appeals.

Fed. R. Civ. P. 83

(a) Local Rules.

(1) In General.

After giving public notice and an opportunity for comment, a district court, acting by a majority of its district judges, may adopt and amend rules governing its practice. A local rule must be consistent with — but not duplicate — federal

statutes and rules adopted under 28 U.S.C. §§ 2072 and 2075, and must conform to any uniform numbering system prescribed by the Judicial Conference of the United States. A local rule takes effect on the date specified by the district court and remains in effect unless amended by the court or abrogated by the judicial council of the circuit. Copies of rules and amendments must, on their adoption, be furnished to the judicial council and the Administrative Office of the United States Courts and be made available to the public.

(2) Requirement of Form.

A local rule imposing a requirement of form must not be enforced in a way that causes a party to lose any right because of a nonwillful failure to comply.

(b) Procedures When There is No Controlling Law.

A judge may regulate practice in any manner consistent with federal law, rules adopted under 28 U.S.C. §§ 2072 and 2075, and the district's local rules. No sanction or other disadvantage may be imposed for noncompliance with any requirement not in federal law, federal rules, or the local rules unless the alleged violator has been furnished in the particular case with actual notice of the requirement.

D.C.COLO.LCivR 83.3

THE BAR OF THE COURT

A. Applicant Information. An applicant for admission to the bar of this court must be a person licensed by the highest court of a state, federal territory, or the District of Columbia, be on active status in a state, federal territory or the District of Columbia, and be a member of the bar in good standing in all courts and jurisdictions where he or she has been admitted. Each applicant for admission shall complete an approved form provided by the clerk. Each applicant shall pay to the clerk the fee prescribed by the court.

. . .

E. Member in Good Standing. An attorney admitted to the bar of this court must remain in good standing in all courts where admitted. "In good standing" means not subject to suspension or disbarment by any court for any reason. An attorney who is not in good standing shall not practice before the bar of this court or continue to be an attorney of record in any pending case. On notice to this court of lack of good standing from the suspending or disbarring jurisdiction, or otherwise, the clerk of this court shall make a notation in the court record of such lack of good standing.

. . .

3. *Reinstatement or Readmission* . . . Application for reinstatement or readmission following suspension or disbarment from practice as a member of the bar

of this court for any reason shall be made in accordance with the terms of D.C.COLO.LCivR 83.5I.

F. Relief From Rule of Good Standing. It is presumed that discipline by another court against a member of this court's bar is appropriate. In order to obtain relief, the attorney so disciplined has the burden to establish, by clear and convincing evidence, that:

1. the procedure resulting in discipline by the court was so lacking in notice or opportunity to be heard as to deny due process,

2. the application of D.C.COLO.LCivR 83.3E would result in grave injustice, or

3. the kind of misconduct established has been held by this court to warrant substantially less severe discipline. Applications under this section shall be filed with or referred to the Committee on Conduct, which shall proceed in accordance with the provisions of D.C.COLO.LCivR 83.5D.

D.C.COLO.LCivR 83.5
ATTORNEY DISCIPLINE

. . .

I. Application for Reinstatement or Readmission.

1. *General Procedure.* An attorney who has been suspended or disbarred may apply for reinstatement or readmission at the end of the disciplinary period. Each applicant for readmission or reinstatement shall complete an approved form provided by the clerk. Reinstatement or readmission is neither automatic nor a matter of right. Every application for reinstatement or readmission shall be investigated by one or more members of the Committee appointed by the Committee's chairperson. Following investigation, the Committee shall prepare a recommendation on the application. The recommendation and supporting documents shall be submitted to the Panel for decision. Reinstatement or readmission may be subject to conditions such as monitoring, reporting, testing, and education.

2. *Relationship to D.C.COLO.LCivR 83.3E and D.C.COLO.LCrR 57.5E.* Suspension or disbarment of an attorney by any court may result in suspension or disbarment in a court other than the original disciplining court. An attorney applying for reinstatement or readmission to this court following reinstatement or readmission by the original disciplining court who remains suspended or disbarred in a court other than the original disciplining court or this court is subject to D.C.COLO.LCivR 83.3E and D.C.COLO.LCrR 57.5E requiring attorneys to be in good standing in all courts where admitted in order to be or remain admitted to the bar of this court. An attorney suspended or disbarred automatically in a court other than the original disciplining court or this

court as a result of suspension or disbarment by the original disciplining court may petition this court for relief from the rule of good standing pursuant to D.C.COLO.LCivR 83.3F or D.C.COLO.LCrR 57.5F, stating appropriate grounds for such relief.

. . .

D.C.COLO.LCrR 57.5
THE BAR OF THE COURT

A. Applicant Information. An applicant for admission to the bar of this court must be a person licensed by the highest court of a state, federal territory, or the District of Columbia, be on active status in a state, federal territory or the District of Columbia, and be a member of the bar in good standing in all courts and jurisdictions where he or she has been admitted. Each applicant for admission shall complete an approved form provided by the clerk. Each applicant shall pay to the clerk the fee prescribed by the court.

. . .

E. Member in Good Standing. An attorney admitted to the bar of this court must remain in good standing in all courts where admitted. "In good standing" means not subject to suspension or disbarment by any court for any reason. An attorney who is not in good standing shall not practice before the bar of this court or continue to be an attorney of record in any pending case. On notice to this court of lack of good standing from the suspending or disbarring jurisdiction, or otherwise, the clerk of this

court shall make a notation in the court record of such lack of good standing.

. . .

3. *Reinstatement or Readmission* . . . Application for reinstatement or readmission following suspension or disbarment from practice as a member of the bar of this court for any reason shall be made in accordance with the terms of D.C.COLO.LCrR 57.7I.

F. Relief From Rule of Good Standing. It is presumed that discipline by another court against a member of this court's bar is appropriate. In order to obtain relief, the attorney so disciplined has the burden to establish, by clear and convincing evidence, that:

1. the procedure resulting in discipline by the court was so lacking in notice or opportunity to be heard as to deny due process,

2. the application of D.C.COLO.LCrR 57.5E would result in grave injustice, or

3. the kind of misconduct established has been held by this court to warrant substantially less severe discipline. Applications under this section shall be filed with or referred to the Committee on Conduct, which shall proceed in accordance with the provisions of D.C.COLO.LCrR 57.7D.

D.C.COLO.LCrR 57.7
ATTORNEY DISCIPLINE

. . .

I. Application for Reinstatement or Readmission.

1. *General Procedure.* An attorney who has been suspended or disbarred may apply for reinstatement or readmission at the end of the disciplinary period. Each applicant for readmission or reinstatement shall complete an approved form provided by the clerk. Reinstatement or readmission is neither automatic nor a matter of right. Every application for reinstatement or readmission shall be investigated by one or more members of the Committee appointed by the Committee's chairperson. Following investigation, the Committee shall prepare a recommendation on the application. The recommendation and supporting documents shall be submitted to the Panel for decision. Reinstatement or readmission may be subject to conditions such as monitoring, reporting, testing, and education.

2. *Relationship to D.C.COLO.LCivR 83.3E and D.C.COLO.LCrR 57.5E.* Suspension or disbarment of an attorney by any court may result in suspension or disbarment in a court other than the original disciplining court. An attorney applying for reinstatement or readmission to this court following reinstatement or readmission by the original disciplining court who remains suspended or disbarred in a court other than the original disciplining court or this court is subject to D.C.COLO.LCivR 83.3E and D.C.COLO.LCrR 57.5E requiring attorneys to be in good standing in all courts where admitted in order to be or remain

admitted to the bar of this court. An attorney suspended or disbarred automatically in a court other than the original disciplining court or this court as a result of suspension or disbarment by the original disciplining court may petition this court for relief from the rule of good standing pursuant to D.C.COLO.LCivR 83.3F or D.C.COLO.LCrR 57.5F, stating appropriate grounds for such relief.